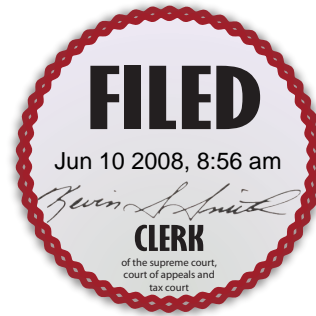


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE ADOPTION OF:

C.I., J.A.S., J.E.S., and M.I.

)

)

No. 49A05-0707-CV-365

)

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Charles J. Deiter, Judge

The Honorable Richard Turner, Commissioner

Cause No. 49D08-0607-AD-27596

June 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Christopher and Trease S. (“the Foster Parents”) petitioned to adopt their four foster children, a sibling group consisting of C.I., J.A.S., J.E.S., and M.I. (“the Children”). Lena J., the paternal grandmother of twins J.A.S. and J.E.S. (“Grandmother”), petitioned to adopt them. The trial court granted the Foster Parents’ petition to adopt C.I. and M.I. but granted Grandmother’s petition to adopt J.A.S. and J.E.S. The Foster Parents now appeal. We reverse and remand with instructions.

Issue

The Foster Parents present a single issue: whether the trial court clearly erred by finding it to be in the best interests of J.A.S. and J.E.S. that Grandmother, and not the Foster Parents, adopt them.

Facts and Procedural History

Brandy I. had five children by four different fathers.¹ When twins J.A.S. and J.E.S. were born, Brandy was living with Grandmother. Grandmother’s son admitted his paternity of J.A.S. and J.E.S.² After about six months, Brandy moved out and left the twins with Grandmother. When the twins were one year old, Brandy took them for a visit and did not return them to Grandmother. Thereafter, M.I. was born with drugs in her system and Brandy lost custody of her children.

The father of the eldest child took custody of her and the younger four were placed in

¹ The eldest child is not part of this litigation.

² No paternity testing was conducted.

foster care with the Foster Parents in late 2004.³ Grandmother petitioned for custody of J.A.S. and J.E.S. The Marion County Division of Family and Children (“the DCS”) opposed the petition because granting the petition would split the sibling group of four. The CHINS court denied Grandmother’s petition but awarded her visitation.

Two and one-half years later, the Foster Parents petitioned to adopt the Children. Grandmother filed a counter-petition to adopt J.A.S. and J.E.S. A hearing was conducted on April 19, 2007.

At the hearing, evidence was adduced that Grandmother is retired at age sixty-four, she has adequate housing and retirement income, and her daughter-in-law is willing to assume the care of the twins if Grandmother becomes incapacitated. Evidence was also adduced that the Foster Parents are both employed, have one biological child, and sought to adopt all four siblings. The DCS supervisor, DCS case manager, and the Guardian ad Litem all found the Children happy, adjusted to the family unit, and well cared for. They uniformly recommended against splitting up the sibling group.

The DCS refused to execute statutory consent to Grandmother’s adoption of J.A.S. and J.E.S. The trial court denied the Foster Parent’s petition to adopt J.A.S. and J.E.S. but granted their petition to adopt C.I. and M.I. Grandmother’s petition to adopt J.A.S. and J.E.S. was granted. The Foster Parents now appeal the orders regarding J.A.S. and J.E.S.

Discussion and Decision

³ Brandy voluntarily placed M.I. with the Foster Parents and the DCS requested that the Foster Parents take the other three available siblings.

The purpose of Indiana’s adoption statutes is to protect and promote the welfare of children by providing them with stable family units. In re Infant Girl W, 845 N.E.2d 229, 236 (Ind. Ct. App. 2006), trans. denied. The best interests of the children are paramount. Id. Indiana Code Section 31-19-11-1(a)(1) provides that a court may grant an adoption after it “has heard the evidence and finds that the adoption requested is in the best interest of the child[.]” Indiana Code Section 31-19-9-1 requires that “unless as otherwise provided in this chapter, a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by ... [e]ach person, agency, or county office of family and children having lawful custody of the child whose adoption is being sought.” If the DCS refuses to consent to the adoption, the trial court must determine whether the DCS is acting in the best interests of the child in withholding consent. In re Adoption of L.M.R., 884 N.E.2d 931, 936 (Ind. Ct. App. 2008).

This Court will not disturb the trial court’s decision in an adoption proceeding unless the evidence at trial leads to but one conclusion and the trial court reached the opposite conclusion. In re Adoption of M.L.L., 810 N.E.2d 1088, 1091 (Ind. Ct. App. 2004). We do not reweigh the evidence or assess the credibility of witnesses. Id. However, we owe no deference to the trial court’s legal conclusions. In re Adoption of M.M.G.C., 785 N.E.2d 267, 269 (Ind. Ct. App. 2003).

The Foster Parents cared for the four siblings without interruption for two and one-half years. The Guardian Ad Litem testified that the parents and siblings were bonded and their interaction was “awesome.” (Tr. 20.) DCS supervisor Gosbia Pawlak testified that,

during her numerous opportunities for observation, the siblings were “always happy” and their needs were met in the Foster Parents’ home. (Tr. 29.) In her opinion, the Foster Parents, their biological child, and the four foster siblings “function as a full family.” (Tr. 33.)

However, the trial court found it in the best interests of J.A.S. and J.E.S. to be separated from their siblings and adopted by Grandmother. At the same time, the trial court found it in the best interests of M.I. and C.I. to be adopted by the Foster Parents. Without elaboration, the trial court concluded that the DCS failed to consent to Grandmother’s adoption of J.A.S. and J.E.S. “for reasons not in the best interests of the children.” (App. 12.) We find the decision of the trial court to be internally inconsistent.

It is undisputed that the siblings thrived in the Foster Parents’ care and were bonded to each other and to the Foster Parents. The distinguishing circumstance was that two of the siblings were presumably related to Grandmother and had been in her care during their infancy (several years earlier). It appears that the trial court was persuaded by Grandmother’s argument that she was the better adoptive parent “because I’m their blood grandmother.” (Tr. 109.) Nevertheless, Indiana law does not give preferential treatment to blood relatives who seek to adopt a child. In re Adoption of B.C.S., 793 N.E.2d 1054, 1062 (Ind. Ct. App. 2003).

The evidence of record supports the trial court’s determination with regard to the best interests of C.I. and M.I. The same evidence points solely to a conclusion that it is in the best interests of J.A.S. and J.E.S. to likewise be adopted by the Foster Parents. The trial court reached the opposite conclusion by erroneously giving legal preference to a biological

relationship. We therefore reverse the order denying the Foster Parents' petition to adopt J.A.S. and J.E.S. and granting Grandmother's counter-petition for adoption. We remand with instructions to the trial court to grant the Foster Parents' petition to adopt J.A.S. and J.E.S.

Reversed and remanded with instructions.

FRIEDLANDER, J., and KIRSCH, J., concur.